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In re Application of
YOKOI, Haruhiko *et al*
Application No.: 09/486,086
PCT No.: PCT/JP98/02993
Int. Filing Date: 02 July 1998
Priority Date: 20 August 1997
Attorney Docket No.: 50026/020001
For: VECTORS FOR TREATING CANCER

DECISION

This decision is in response to the declaration filed 10 October 2000 which is treated as a petition under 37 CFR 1.42.

BACKGROUND

On 02 July 1998, applicants filed international application PCT/JP98/02993 claiming priority to a Japanese patent application filed 20 August 1997. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 25 February 1999.

On 04 March 1999, a Demand was filed with the International Preliminary Examination Authority electing the United States. The election was made prior to the expiration of 19 months from the priority date. Accordingly, the deadline for submission of a copy of the international application and payment of the basic national fee was extended to expire thirty months from the priority date, *i.e.*, 21 February 2000. (20 February 2000 was a Sunday).

On 18 February 2000, applicants filed a transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371 which was accompanied by, *inter alia*, a small entity statement; a copy of the international application; a preliminary amendment; an English translation; an unsigned declaration; a check of \$615.00 to cover the basic national fee and multiple dependent fee for a small entity; and authorization to charge any additional fees which may be required to Deposit Account No. 03-2095.

On 11 April 2000, a Notification of Missing Requirements and Notification of a Defective Oath or Declaration was mailed indicating that a declaration in compliance with 37 CFR 1.497 and surcharge pursuant to 37 CFR 1.492(e) was required. The declaration submitted on 18 February 2000 was not in compliance with 37 CFR 1.63

because it was not signed. A one month time limit was set for response.

On 10 October 2000, applicants filed a declaration signed by two of the three co-inventors and the legal representative of the third co-inventor, Katsuo Takedo. In addition, applicants submitted a five-month extension with fee and a small entity statement.

DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Here, applicants have furnished a declaration signed by Eiko Takeda as the "Legal Representative for Katsuo Takeda--deceased." In the declaration, applicants have provided the name, citizenship, residence, and post office address of the legal representative. However, applicants have not provided any information on the deceased inventor, Katsuo Takeda such as his mailing address prior to his death, his residence, and his citizenship. This information is required pursuant to 37 CFR 1.497(a) & (b).

CONCLUSION

Applicants' petition under 37 CFR 1.42 is **DISMISSED** without prejudice.

Applicants are required to provide an oath or declaration in compliance with 37 CFR 1.497(a) and (b) within a time limit of **TWO (2) MONTHS** from the mail date of this decision. Extension of time may be granted under 37 CFR 1.136.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.



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